ECORD
AND
RIEF

Supreme Court, U.S.
FILED
SEP 15 2017
OFFICE OF THE CLERK

Nos. 16-1436 & 16-1540

IN THE

Supreme Court of the United States

DONALD J. TRUMP, *et al.*, *Petitioners*,
v.
INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*, *Respondents*.

DONALD J. TRUMP, *et al.*, *Petitioners*,
v.
HAWAII, *et al.*, *Respondents*.

On Writs of Certiorari to the United States Courts of Appeals for the Fourth and Ninth Circuits

BRIEF OF KARAMAH AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

KARAMAH is a non-profit organization that derives its name from the Arabic term for "dignity." Through education, legal outreach, and advocacy, KARAMAH promotes human rights worldwide, particularly the rights of Muslim women and girls in Islamic and civil law. KARAMAH aims to create a global network of advocates for the rights of Muslim women, educate the public with respect to the gender-equitable principles of Islam, and advance the cause of Muslim women's rights in legal and social environments.

KARAMAH submits this brief to assist the Court in understanding the severe and detrimental impact of Executive Order 13,780 on women and children, who make up the majority of affected immigrants and refugees seeking to enter the United States.[1]

As an organization advocating for the rights of Muslim women and children for nearly twenty-five years, including immigrants and refugees from the countries singled out by the Executive Order, KARAMAH has a direct and substantial interest in the outcome of this case. KARAMAH is therefore qualified to inform the Court of the devastating impact on Muslim women and children if the Court were to uphold Executive Order 13,780.

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[1] No person other than KARAMAH and its counsel authored any part of this brief or made a financial contribution to the brief. Petitioners have filed a blanket letter of consent. Consent from Respondents has been provided to the Clerk's office.

SUMMARY OF ARGUMENT

The majority of immigrants and refugees affected by Executive Order 13,780 are women and children fleeing conflict, gender-based violence and terrorism. If implemented, it would mean turning our back to these most vulnerable populations. America's security is undisputedly vital, and governmental action to protect national security is often entitled to deference. But when such action is neither constitutional, rational, nor humane, that deference must be set aside in favor of judicial review. Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (the "Executive Order" or "Order") is exactly the kind of unsupported and unsupportable order for which this judicial power must be exercised.

Indeed, the Order, which suspends (i) the entry into the United States of all individuals from six Muslim-majority countries: Iran, Libya, Sudan, Somalia, Syria and Yemen (the "Designated Countries"), and (ii) the entire U.S. refugee program, most gravely harms women and children who are seeking safety from conflict, gender-based violence, and terrorism. The majority of refugees worldwide, including those fleeing the Designated Countries, are women and children. As such, implementation of the Order would result in our country's turning away the most vulnerable segments of society, who often are desperately seeking to escape some of the world's most dangerous conditions.

The impact of the Order on women and children demonstrates why the Order violates the Immigration and Nationality Act ("INA"), 8 U.S.C. 1101 *et seq.* The Order exceeds the authority granted to the Executive in the INA because the President has not shown any,

let alone sufficient, harm to the national interest in denying entry to the people most likely to need protection from the very dangers the Order seeks to address. Indeed, it makes no sense for the government to argue that the entry to the United States of women and children fleeing conflict, gender-based violence, and terrorism, would be detrimental to the national security interests of our country. Furthermore, because the Order has a disparate impact on women, it violates the INA's explicit gender protections.

Not only has the President failed to show how the entry of affected immigrants and refugees is detrimental to our country's interests, his Order fundamentally harms long-established U.S. national security and foreign policy interests. For decades, the empowerment and protection from gender-based violence and other human rights abuses of women and girls have been the subject of Executive Orders and programs by Executive agencies, which explicitly recognize the protection of women in danger as national security and foreign policy interests. By turning a blind eye to the vast numbers of persecuted women and children fleeing violence and abuse, the Order undermines these important policy objectives and, at the same time, permanently damages our country's long-standing commitment to aiding the most vulnerable.

RELEVANT FACTUAL BACKGROUND

A. The Majority of Migrants from the Designated Countries and Refugees Are Women and Children, Who Are Often Fleeing Distinctive Forms of Violence and Abuse.

It is well known that wars, warlike conditions, and weakened human rights protections, such as those that exist in the Designated Countries, give rise to horrific abuses of women and children in particular. Around the world, women and children are often victims of many forms of abuse and gender-based violence, including rape, beatings, forced marriage, and human trafficking. As a result of dangers in the Designated Countries (detailed below) and similar patterns elsewhere, tens of millions of women and children worldwide have fled their homes in search of refuge. In 2016, almost half of the refugees worldwide were women, and fifty-one percent were minors under eighteen.[2]

Iran. In Iran, a combination of economic stagnation and state and popular opposition to women's equal employment push disproportionate numbers of women into "informal" or "fragile" economies, where legal protections are minimal and labor conditions and compensation practices are often grossly exploitative.[3]

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[2] UNHCR, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2016, at 2, 54–55 (2017), http://www.unhcr.org/5943e8a34.

[3] *See* HUMAN RIGHTS WATCH, IT'S A MEN'S CLUB: DISCRIMINATION AGAINST WOMEN IN IRAN'S JOB MARKET, at 20–22 (2017), https://www.hrw.org/sites/default/files/report_pdf/iran0517_web_1.pdf.

Libya. UNICEF reports that over three quarters of children fleeing through and from Libya as refugees have suffered violence, harassment, and aggression, and over half of fleeing women experienced sexual violence or abuse.[4] Because of the proximity of Libya to Italy, compared to other Mediterranean Sea crossings, women and children undertaking this journey and facing these distinct depredations include nationals not only of Libya itself (the site of a bitter, years-long internal armed conflict[5]) but also of Somalia and Sudan.[6] The treacherous migrations of these women and children are partly fueled by patterns of gender-based mistreatment and abuse, which are exacerbated by deep and lasting material deprivations in those Designated Countries.

Somalia. Somali children face severe malnutrition from intense drought and famine, leaving internally displaced children especially vulnerable to deadly diseases that thrive in the close quarters of emergency settlements.[7] Of the hundreds

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[4] UNICEF, A DEADLY JOURNEY FOR CHILDREN: THE CENTRAL MEDITERRANEAN MIGRATION ROUTE, at 4 (2017), https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf

[5] Chris Stephen, *Five years after Gaddafi, Libya torn by civil war and battles with Isis*, THE GUARDIAN (Feb. 16, 2016, 1:43 PM), https://www.theguardian.com/world/2016/feb/16/libya-gaddafi-arab-spring-civil-war-islamic-state.

[6] *See* UNICEF, A DEADLY JOURNEY FOR CHILDREN: THE CENTRAL MEDITERRANEAN MIGRATION ROUTE, at 2 (highlighting Somalia and Sudan as two of the "[m]ain countries of origin" of refugees traveling the Central Mediterranean migration routes).

[7] Stephanie Nebehay, *Acute malnutrition surges in Somali children: UNICEF*, REUTERS (May 2, 2017), https://www.reuters.com/article/us-malnutrition-somalia/acute-

of thousands of people who died under famine conditions in Somalia, half were under five years old.[8]

Syria. As of August 2017, over 5 million Syrian nationals had registered as refugees living outside Syria—over forty-seven percent of whom were under eighteen years old.[9] An additional 2.8 million children are estimated to have been displaced from their homes but remained in Syria.[10] According to the U.S. Department of State, forced recruitment of children into combat roles was already "commonplace" among many factions in the Syrian conflicts as of 2015, and has only increased, affecting children as young as six.[11] Violence against Syrian women refugees living in makeshift camps outside their home country, including in Lebanon, has also increased.[12]

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[8] UNICEF, *The Situation of Women and Children in Somalia* (last visited Sept.7, 2017), https://www.unicef.org/somalia/children.html.

[9] *See* UNHCR, OPERATIONS PORTAL REFUGEE SITUATIONS, http://data.unhcr.org/syrianrefugees/regional.php (click "Syria Regional Refugee Response") (last updated Jul. 27, 2017).

[10] Dan Nolan, *Children of Syria by the Numbers*, FRONTLINE (Apr. 19 2016), http://www.pbs.org/wgbh/frontline/article/children-of-syria-by-the-numbers/.

[11] U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, at 381 (June 2017), https://www.state.gov/documents/organization/271339.pdf.

[12] Global Fund for Women, *Women and the Refugee Crisis: A News Update from Lebanon*, https://www.globalfundforwomen.org/news-update-refugee-crisis/#.Wa3YvHaGOUk (last visited Sept. 7, 2017).

Sudan. Sudanese women, especially politically active women, face documented patterns of sexual violence, disparate enforcement of morality laws, and social and reputational attack campaigns.[13] These domestic harms are in addition to massive displacement of refugees from neighboring South Sudan, where a long-running famine has had drastic negative health effects on children in particular.[14]

Yemen. Years of war and famine in Yemen have worsened already high rates of abuse targeting women and girls, and have led to widespread malnutrition and a breakdown in access to medical care that particularly imperils women in childbirth and children in development.[15] The United Nations Population Fund reports that increasing numbers of desperate Yemeni families are also resorting to arranged marriages for their very young daughters,

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[13] *See generally* HUMAN RIGHTS WATCH, GOOD GIRLS DON'T PROTEST: REPRESSION AND ABUSE OF WOMEN HUMAN RIGHTS DEFENDERS, ACTIVISTS, AND PROTESTERS IN SUDAN (2016), https://www.hrw.org/sites/default/files/report_pdf/sudan0316web.pdf.

[14] *See* UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, SUDAN HUMANITARIAN REPORT (June 12, 2016), http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_Sudan_Weekly_Humanitarian_Bulletin_Issue_24_%286_-_12_June_2016%29.pdf.

[15] *See* UNITED NATIONS POPULATION FUND, *At two-year mark, Yemen's conflict takes heavy toll on women and girls* (Mar. 23, 2017), http://www.unfpa.org/news/two-year-mark-yemens-conflict-takes-heavy-toll-women-and-girls ("Yemen already has one of the highest maternal death rates in the Arab region. But food scarcity is putting the lives of 352,000 pregnant women at risk, and it could harm the health of 2.2 million women of childbearing age.").

perhaps hoping to place them in protective environments or increase their own slim chances of security, but tragically resulting in the girls' extreme vulnerability to abuse.[16]

The Executive Order keeps these women and children in peril. In 2015, over 33,000 women and girls entered the United States as refugees, comprising nearly forty-eight percent of all new U.S. refugees.[17] In 2016, 15,507 women and girls entered the United States as refugees *from the Designated Countries alone.*[18] The Executive Order would block these women and girls who, in significant part because of their gender and/or age, desperately require refuge.

B. Women Bear the Added Burden of Being the Primary Guardians for Migrating Children.

Because women disproportionately bear responsibility for the many children who are victims of violence, abuse, and conflict in the Designated Countries, they are often twice victimized: once by the

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[16] UNITED NATIONS POPULATION FUND, *Families increasingly resort to child marriage as Yemen's conflict grinds on* (Nov. 16, 2016), http://www.unfpa.org/news/families-increasingly-resort-child-marriage-yemen%E2%80%99s-conflict-grinds (noting that nearly one third of young women are married before age 18).

[17] U.S. DEP'TS OF STATE, HOMELAND SECURITY, AND HEALTH AND HUMAN SERVICES, PROPOSED REFUGEE ADMISSIONS FOR FISCAL YEAR 2017, at 65 (2016), https://www.state.gov/documents/organization/262168.pdf.

[18] *See Interactive Reporting*, REFUGEE PROCESSING CTR., http://ireports.wrapsnet.org/ (click "MX - Arrivals for a Demographic Profile"; then select Year Type "Calendar Year" and enter date range 1/1/2016 – 12/31/2016; then select each Designated Nation and click "View Report").

gendered forms of direct violence and oppression detailed herein, and again by various heightened harms to and needs of children in their care. The fate of many women is inextricably bound to the fate of their children.

The conflict in Syria has pushed many women into serving as sole heads of their households for the first time. In 2014, the U.N. High Commissioner for Human Rights (UNHCR) reported that over a quarter of Syrian refugee households are headed by women.[19] This phenomenon has only intensified. CARE found last year, based on self-reports from mostly Syrian refugees traveling through Greece, that roughly *half* of the households surveyed were headed by women.[20]

Women single-handedly caring for large numbers of children (both their own and those of relatives) have also been observed to account for "most" of the Somali

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[19] UNHCR, WOMAN ALONE: THE FIGHT FOR SURVIVAL BY SYRIA'S REFUGEE WOMEN, at 8 (2014), https://s3.amazonaws.com/unhcrsharedmedia/2014-syria-woman-alone report/Woman_Alone_ENG_2_July_2014.pdf.

[20] *On Her Own: How women forced to flee from Syria are shouldering increased responsibility as they struggle to survive*, CARE (Sept. 2016), http://www.care.org/sites/default/files/documents/care_on-her-own_refugee-media-report_sept-2016.pdf; *see also* Melody Rowell, *Inside the Harrowing Journeys of Refugee Mothers*, NAT'L GEOGRAPHIC (Jan. 10, 2017), http://www.nationalgeographic.com/photography/proof/2017/01/syria-greece-refugees-mothers-pregnancy/ ("As [photojournalist Myrto Papadopoulos] spent time in refugee camps in Greece, she noticed that women would often be left behind with the children while their husbands forged ahead to find new lives for them in Europe.").

refugee households sheltering in parts of Ethiopia.[21] And UNHCR has found that internally displaced Yemeni "women are subject to particular protection problems, especially given the large number of single-female-headed households."[22]

The consequences of growing up as a refugee are profound and permanent. In addition to the many health and welfare issues affecting refugee children described above, the psychological effects on children raised in the midst of bitter conflict are likely to be devastating.[23] As a result of their roles as the lone heads of displaced households, many women must find ways to grapple not only with their own traumas, but with these brutal effects on children under their care.

In short, Muslim women and children from the Designated Countries are the most likely to seek, and be entitled to, safety and security in the United States because they are often fleeing conflict, gender-based violence, and terrorism. Nonetheless, the Order seeks to bar them from seeking the safety of the United

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[21] UNHCR, *Children Bear Brunt of Somali Refugee Crisis* (Sept. 6, 2011), http://www.unhcr.org/en-us/news/briefing/2011/9/4e65edec9/children-bear-brunt-somali-refugee-crisis.html.

[22] *See* UNHCR, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2015, at 31 (2016), http://www.unhcr.org/en-us/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html.

[23] *See, e.g.*, Somini Sengupta and Hwaida Saad, *New Dangers Stalk Syrian Children Still Haunted by Horrors Under ISIS*, N.Y. TIMES (July 31, 2017), https://www.nytimes.com/2017/07/31/world/middleeast/syria-raqqa-children-islamic-state-isis.html ("Save the Children found that nearly half the adult respondents said they had seen children who had lost the ability to speak or had developed speech impediments since the start of the war.").

States, citing the very conditions from which they are often fleeing.

ARGUMENT

I. THE EXECUTIVE ORDER VIOLATES THE INA.

The Order violates the INA for two reasons. First, the INA specifically requires the President to make a finding that the entry of certain aliens would be "detrimental" to our Nation's interests—which he has not. Second, the Order disparately impacts women, in violation of the sex discrimination provisions of the INA.

A. The President Cannot Demonstrate How the Entry of Women and Children Is Detrimental to Our Nation's Interests.

In the Order, the President relied on 8 U.S.C. § 1182(f) to restrict entry of individuals from the Designated Countries. *See* 82 Fed. Reg. 13,213. Section 1182(f) states: "Whenever the President *finds* that the entry of any aliens or of any class of aliens into the United States *would be detrimental* to the interests of the United States, he may . . . suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate." (emphasis added). Though Section 1182(f) affords the President broad discretion to suspend the entry of aliens, that discretion is not unlimited.[24] Rather,

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[24] Ironically, while the government argues the President is entitled to "expansive discretion" to suspend entry of aliens abroad, *see, e.g.*, Brief for the Pet'rs at 41 (Aug. 10, 2017), the President has meanwhile ordered an end to the Deferred Action for Childhood Arrivals program, stating it was "an unconstitutional exercise of discretion by the executive branch,"

Section 1182(f) requires the President to make a finding of detriment. *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 451 (2002) (stating that a court must first "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in this case").

The Order, however, fails to make any finding that entry of citizens of the Designated Countries—let alone the women and children—would be detrimental to our nation's interests. Rather, the Order recites only that the governments of the Designated Countries either are unstable, are state sponsors of terrorism, or maintain insecure borders which enable terrorists to freely operate. *See* 82 Fed. Reg. at 13,210–11. The Order states no more than that these country conditions "demonstrate why their nationals continue to present heightened risks." *Id.* at 13,210.

Press Release, The White House, Office of the Press Secretary, President Donald J. Trump Restores Responsibility and the Rule of Law to Immigration (Sept. 5, 2017), https://www.whitehouse.gov/the-press-office/2017/09/05/president-donald-j-trump-restores-responsibility-and-rule-law.

In other words, the government is effectively saying federal immigration law entitles the President to maximum discretion to restrict entry of individuals (including women and children), but at the same time constrains his prosecutorial discretion on whether to deport individuals. The government's test for the legitimacy of executive action is nothing more than what is politically expedient. Where the President favors executive action, the government argues his discretion is unfettered. But where the President disfavors an executive action, the government simply labels it unconstitutional. Surely, there must be some more principled criteria for the lawfulness of executive action than Presidential whim.

Critically, however, the Order undeniably makes no finding that the entry of individuals or a class of individuals from the Designated Countries would be detrimental to the United States, nor could it. Most of those individuals are likely to be vulnerable women and children who are themselves fleeing persecution, and already undergoing thorough vetting if they seek admission into the United States. Indeed, refugees are one of the most heavily scrutinized demographics of immigrants to the United States.[25] Refugees must endure an exhaustive two-year-long process spanning twenty steps of checks and balances before arriving in the United States. But the Order demonizes refugees, including innocent children and women, for the acts of the very extremists they are trying to escape.[26] Further, no fatal attack has ever been executed on U.S. soil by a refugee.[27] This inconsistency illustrates the vivid contrast between what the Order claims to do—namely, protect Americans from potential terrorists—and the reality that the Order disproportionately targets and harms women and children. *Cf. Kaliski v. Dist. Dir. of INS*, 620 F.2d 214, 217 (9th Cir. 1980) (discussing the "humane purpose"

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[25] Haeyoun Park & Larry Buchanan, *Refugees Entering the U.S. Already Face a Rigorous Vetting Process*, N.Y. TIMES (Jan. 29, 2017), https://www.nytimes.com/interactive/2017/01/29/us/refugee-vetting-process.html.

[26] Peter Kessler, ed. Fernando del Mundo, *Replace vilification with refugee protection, says Lubbers*, UNHCR (Oct. 3, 2003), http://www.unhcr.org/cgibin/texis/vtx/search?page=search&skip=594&docid=3f7d9ac57&query=persecution.

[27] Eric Levenson, *How many fatal terror attacks have refugees carried out in the US? None*, CNN (Jan. 29, 2017), http://www.cnn.com/2017/01/29/us/refugee-terrorism-trnd/.

of the INA); H.R. Rep. No. 85-1199, pt. 2 (1957), *as reprinted in* 1957 U.S.C.C.A.N. 2016, 2012 (observing that the "legislative history of the Immigration and Nationality Act clearly indicates that Congress intended to provide for a liberal treatment of children").

And as was the case with the original Executive Order listing seven Muslim-majority nations, none of the now six Designated Countries[28] in the Order has ever produced an individual who committed an act of terrorism resulting in any fatality in the United States. The Order attempts to refute this fact by citing an example of two Iraqi refugees convicted of terrorism. But, in this revised Order, Iraq is no longer on the list. That the only two examples offered in support of the Order come from a country that is not on the list underscores the absence of any finding to support the current version of the Order, and this additional paradox is yet another example that shows the Order is, in fact, disingenuous.

While the President baldly concludes that the "unrestricted entry . . . of nationals" from the Designated Countries "would be detrimental to the interests of the United States," that is not how Section 1182(f), by its plain language, operates. Rather a "finding" is required. The data, however, simply does not support a conclusion that allowing mostly women and children from the Designated Countries entry into the United States would be detrimental to the interests of our nation. The failure to demonstrate

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[28] The Order excluded Iraq for national security considerations relating to the presence of American forces in that country. *See* 82 Fed. Reg. at 13,211–12.

otherwise means the President has exceeded his authority under the INA.

B. The Order Discriminates Against Women, in Violation of the INA.

Because of the predictably disparate impact of the Order on women, the Order discriminates against women in violation of the INA.[29] Section 1152(a)(1)(A) of the INA requires that, except as provided in other provisions of the Act, "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, *sex*, nationality, place of birth, or place of residence." 8 U.S.C. § 1152(a)(1)(A) (emphasis added). Here, the Order violates Section 1152(a)(1)(A)'s sex discrimination provision because it imposes a disparate impact on women.

The government has previously granted roughly as many immigrant visas to women and girls as to men and boys from each of the Designated Countries.[30] As detailed above, however, women and children attempting to flee from a Designated Country to the United States are more likely to encounter devastating violence, oppression, and/or material deprivation than similarly-situated adult men. Moreover, two other circumstances make clear that women in particular will unequally bear the burden of a blanket refusal to issue visas to people from the

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[29] We agree with Respondents that the Order explicitly discriminates on the basis of nationality and religion in violation of the INA. We add for the Court's consideration that the Order also discriminates on the basis of sex in violation of the INA.

[30] *See Interactive Reporting*, REFUGEE PROCESSING CTR.

Designated Countries: children are over-represented in the refugee population, and women shoulder most of the burden for their care.

The Order imposes burdens on women *as women* in entirely predictable and unlawful ways. As a result, the Order's disparate impact on women constitutes a discriminatory practice in violation of Section 1152(a)(1)(A). *Cf., e.g., Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2518–19 (2015) (holding discriminatory intent is not required to be pled in cases alleging disparate-impact under the Fair Housing Act). By either refusing or simply neglecting to grapple with these significant, predictable gendered effects of the Order, the President has further violated Section 1152(a)(1)(A) of the INA.

II. THE ORDER HARMS OUR NATIONAL SECURITY INTERESTS AND FOREIGN POLICY PRIORITIES OF PROMOTING HUMAN RIGHTS, GENDER EQUALITY, AND PROTECTION OF AT-RISK CHILDREN.

Not only has the President failed to show how the entry of mostly women and children from the Designated Countries and refugee population will detrimentally harm our nation, his Order affirmatively harms our nation's interests. As explained above, Executive Order 13,780 would severely impact women and children fleeing some of the world's most repressive and dangerous areas. In each of the six Muslim-majority countries named in the Order, women and children consistently face actual or threatened displacement and gender-based violence, including early and forced marriage, sexual abuse, kidnapping, human-trafficking, and other

human rights violations.[31] As is true globally, one in three women in the Designated Countries experiences gender-based violence in her lifetime. Yet the Order would effectively shut the door on these women and children. This result is at odds with the Order's purported national security rationale.[32] Instead, the Order contravenes and severely damages this country's long-term national security and foreign policy interests.[33]

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[31] HUMAN RIGHTS WATCH, WORLD REPORT, at 338 (discussing Iran), 407–09 (discussing Libya), 537–39 (discussing Somalia), 561-66 (discussing Sudan), 572–77 (discussing Syria), 678–80 (discussing Yemen) (2017), https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf.

[32] The rationale behind the Order is further belied by the President's subsequent statements on national security. For example, in a primetime speech to the country, the President said that "20 U.S.-designated foreign terrorist organizations are active in Afghanistan and Pakistan — the highest concentration in any region anywhere in the world" and that "Pakistan often gives safe haven to agents of chaos, violence, and terror." Remarks by President Trump on the Strategy in Afghanistan and South Asia, The White House, Office of the Press Secretary, (Aug. 21, 2017, 9:02 PM), https://www.whitehouse.gov/the-press-office/2017/08/21/remarks-president-trump-strategy-afghanistan-and-south-asia.

Tellingly, neither Afghanistan nor Pakistan is included as a Designated Country by the Order.

[33] Although the judiciary is "reluctant" to intrude upon the authority of the executive branch on national security affairs, *Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988)), the Executive may only exercise that authority within the confines of the law, *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 645–46, 654–55 (1952) (Jackson, J., concurring).

A. The Order's Impact on Women and Children Harms Our National Security Interests.

The White House and several Executive agencies have "long recognized" and sought to stem an "increased prevalence and risk of gender-based violence, particularly targeted at women and girls."[34] Indeed, the latest Presidential National Security Strategy report, which is intended to be a "comprehensive description" of the foreign policy and "worldwide interests, goals, and objectives of the United States that are vital to the national security of the United States,"[35] identifies ensuring that women are "protected from gender-based violence" as a "national security interest."[36] *See also* U.S. Dep't of State, Bur. Population, Refugees, and Migration, *Addressing Gender-Based Violence in Emergencies* ("protection of women and girls has been a central part of U.S. . . . national security").

For these reasons, several Executive Orders currently in effect direct federal efforts to provide protection for women and children facing humanitarian emergencies. For example, Executive Order 13,623, "Preventing and Responding to

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[34] U.S. DEP'T OF STATE, BUR. POPULATION, REFUGEES, AND MIGRATION, *Addressing Gender-Based Violence in Emergencies*, https://www.state.gov/j/prm/policyissues/issues/c62377.htm (last visited Sept. 7, 2017).

[35] 50 U.S.C. § 3043(a) & (b). President Donald Trump's administration has not yet produced or published an updated National Security Strategy.

[36] THE WHITE HOUSE, NATIONAL SECURITY STRATEGY, at 11 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/2015_national_security_strategy_2.pdf.

Violence Against Women and Girls Globally," 77 Fed. Reg. 49,345 (Aug. 10, 2012), created an interagency working group to implement "a comprehensive, multi-sector approach to prevent and respond to gender-based violence" and "ensure that agencies prioritize this issue in their implementation of U.S. foreign policy."[37] Section 1 of Executive Order 13,623 states: "Recognizing that gender-based violence undermines not only the safety, dignity, and human rights of the millions of individuals who experience it, *but also the public health, economic stability, and security of nations*, it is the policy and practice of the executive branch of the United States Government to have a multi-year strategy that will more effectively prevent and respond to gender-based violence globally." 77 Fed. Reg. 49,345 (emphasis added).[38]

Similarly, Executive Order 13,595, "Instituting a National Action Plan On Women, Peace, And Security," orders the U.S. government to "strengthen its efforts to prevent—and protect women and

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[37] Press Release, The White House, Office of the Press Secretary, Fact Sheet: Preventing and Responding to Violence Against Women and Girls Globally (Aug. 10, 2012), https://obamawhitehouse.archives.gov/the-press-office/2012/08/10/fact-sheet-preventing-and-responding-violence-against-women-and-girls-gl.

[38] The interagency working group created by Executive Order 13,623 is co-chaired by the Secretary of State and the USAID Administrator and includes representatives from the Department of Treasury, Department of Defense, Department of justice, Department of Labor, Department of Health and Human Services, Department of Homeland Security, Office of Management and Budget, the National Security Staff, and the Office of the Vice President. Exec. Order No. 13,623, § 2(a), 77 Fed. Reg. 49,345–46.

children from—harm, exploitation, discrimination, and abuse, including sexual and gender-based violence and trafficking in persons." Exec. Order No., 13,595, § 2(c), 76 Fed. Reg. 80,205 (Dec. 19, 2011). Notably, Section 2(e) requires the federal government "to respond to the distinct needs of women and children in conflict-affected disasters and crises." *Id.* § 2(e). In pursuit of that goal, the White House's National Action Plan designated the Department of Homeland Security to "[p]rovide humanitarian protection *through the administration of immigration benefits programs and other immigration mechanisms, as appropriate, to eligible individuals, including women and girls, in need of relief from persecution or urgent circumstances.*"[39]

Executive Order 13,595 and Executive Order 13,623 remain in effect. Yet the Order would undermine these Executive directives without providing any justification. *See supra* Section I.A.[40]

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[39] THE WHITE HOUSE, UNITED STATES ACTION PLAN ON WOMEN, PEACE, AND SECURITY, at 30 (2016), https://www.usaid.gov/sites/default/files/documents/1868/National%20Action%20Plan%20on%20Women%2C%20Peace%2C%20and%20Security.pdf (emphasis added).

[40] Although Section 11(iii) of the Order directs Secretary of Homeland Security to collect data regarding gender-based violence, the that Section is limited to data collection on foreign nationals already in the United States. Moreover, by only naming "honor killings," the Order advances a common stereotype of Muslim attitudes toward women, supporting the notion that the Order is directly motivated by animus toward the Islamic faith.

B. The Order's Impact on Women and Children Harms Our Foreign Policy.

Implementation of the Order would also damage the stated foreign policy initiatives of the U.S. Department of State and the U.S. Agency for International Development ("USAID"). The State Department's website unequivocally states that "promoting gender equality and addressing gender-based violence is essential" and "protection of women and girls has been a central part of U.S. foreign policy and national security."[41] Since 2000, the U.S. Department of State's Bureau of Population, Refugees, and Migration ("PRM") has allocated targeted funding to combat gender-based violence and protect refugees and conflict victims from human rights violations such as child, early, and forced marriage.[42] Indeed, the State Department has an entire office devoted to women's issues—the Secretary's Office of Global Women's Issues—which, since 1995, has pursued a "mandate to promote the rights and empowerment of women and girls through U.S. foreign policy."[43]

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[41] U.S. DEP'T OF STATE, BUR. POPULATION, REFUGEES, AND MIGRATION, *Addressing Gender-Based Violence in Emergencies.*

[42] U.S. DEP'T OF STATE, BUR. POPULATION, REFUGEES, AND MIGRATION, *Addressing Gender-Based Violence in Emergencies*; U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION - DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS, FISCAL YEAR 2018, at 135, 305 (2017), https://www.state.gov/documents/organization/271013.pdf.

[43] U.S. DEP'T OF STATE, Overview of the Office of Global Women's Issues, https://www.state.gov/s/gwi/ (last visited Sept. 7, 2017).

USAID shares the State Department's recognition of a deep American interest in protecting children and gender-based violence victims, and sees such violence as a "global phenomenon preventing people, especially women and girls, of their right to a life free from violence."[44] The agency has gender programs in more than eighty countries (including many of the Designated Countries), focused specifically on reducing gender-based violence, human trafficking, and child, early and forced marriage.[45] USAID also explicitly emphasizes that the impact of such abuse on women and children "cuts across ethnicity, race, class, religion, education level, and international borders."[46] According to USAID, empowerment of women and children is "critical" to "ending extreme poverty and promoting resilient, democratic societies while advancing our security and prosperity."[47]

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[44] *Reducing Gender-Based Violence*, USAID, https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/reducing-gender-based-violence (last updated Feb. 3, 2017).

[45] *Gender Equality and Women's Empowerment*, USAID, https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment (last updated Jul. 26, 2017); *Preventing and Responding to Gender-Based Violence*, USAID, https://www.usaid.gov/gbv (last updated Dec. 8, 2016).

[46] *Preventing and Responding to Gender-Based Violence*, USAID, https://www.usaid.gov/gbv.

[47] USAID, EVALUATION OF IMPLEMENTATION OF THE UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY: AUGUST 2012 THROUGH JULY 2015, at 1 (2015), https://www.usaid.gov/sites/default/files/documents/1865/GBV-Exec-Summary-Nov-2015.pdf (emphasis added).

Finally, the State Department's Fiscal Year 2018 Budget request also reflects national policy to protect —not abandon—women and children who are vulnerable to gender-based and other forms of violence.[48] For example, the Budget Request seeks $2.7 billion for migration and refugee assistance programs, to "save lives and ease suffering, uphold human dignity, and play a critical role in helping to mitigate and resolve major conflicts and crises in . . . Somalia, South Sudan, Syria, Yemen, and elsewhere. PRM's humanitarian assistance, coupled with diplomacy, forms an essential component of U.S. foreign policy."[49]

The budget also includes (i) $30.3 million to "support[] the U.S. government objectives of protecting and assisting asylum seekers and other vulnerable migrants, advancing regular, orderly and humane migration policies, enhancing security and stability, and promoting respect for the human rights and fundamental freedoms of migrants,"[50] (ii) $188.6 million to "create opportunities for women while responding to harmful tradition practices, such as child, early, and forced marriage and female genital mutilation/cutting and gender-based violence,"[51] and (iii) $78.7 million into "democracy, conflict, and humanitarian assistance" programs to "protect women and girls affected by crisis, conflict, or

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[48] *See generally* U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION.

[49] *Id.* at 305.

[50] *Id.* at 307.

[51] *Id.* at 289.

extremism from gender based violence . . . and other forms of exploitation or abuse (e.g., trafficking in persons)."[52] Success in such efforts would "strengthen[] U.S. national security by creating environments conducive to economic growth and fair trade, addressing problems that are drivers of radicalization and instability, and improving the sustainability of development programs."[53] And, the State Department has requested $8.3 million to "support activities that prevent and respond to gender-based violence and will address the challenges adolescent girls around the world face . . . ."[54]

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In sum, while offering protection to the world's most vulnerable populations is central to U.S. national security and foreign policy objectives, Executive Order 13,780 turns away vast numbers of women and children, many of whom are survivors of gender-based violence and other forms of abuse in their home countries. The Order does so in contravention of the President's statutory authority, Constitutional constraints, and existing national security policy. And it unnecessarily and unwisely invites questions about our government's commitment to our fundamental, founding values as a nation of immigrants.

The life-altering impacts of the Order are catastrophic for many women and children seeking

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[52] *Id.* at 288.

[53] *Id.*

[54] *Id.* at 290.

refuge from danger and persecution, and as such, are corrosive of our nation's values and interests.

CONCLUSION

For the reasons set forth above and those discussed in the briefs of the Respondents, *amicus* KARAMAH respectfully requests the Court affirm the decisions of the Fourth and Ninth Circuits.

DATED: September 15, 2017

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